

STATE OF INDIANA )  
 ) SS: BEFORE THE INDIANA  
COUNTY OF MARION ) COMMISSIONER OF INSURANCE

IN THE MATTER OF: )  
 )  
American Surety Company )  
250 East 96<sup>th</sup> Street, Suite 202 )  
Indianapolis, Indiana 46240 )

Examination of **American Surety Company**

**NOTICE OF ENTRY OF ORDER**

Enclosed is the Final Order entered by Stephen W. Robertson, Commissioner of the Indiana Department of Insurance, after fully considering and reviewing the Verified Report of Examination of **American Surety Company**, any relevant examination work papers, and any written submissions or rebuttals. The Verified Report of Examination, as sent to you on February 28, 2012, has been adopted by the Commissioner.

Pursuant to Ind. Code § 27-1-3.1-12(b), within thirty (30) days of receipt of the Final Order, each director of **American Surety Company** shall file an affidavit with the Indiana Department of Insurance stating that he/she has received a copy of the Verified Report of Examination and the Final Order.

The Final Order is a final administrative decision that may be appealed pursuant to Ind. Code § 4-21.5-5.

4/18/12  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Cynthia D. Donovan  
Chief Financial Examiner

**CERTIFIED MAIL NUMBER: 7005 3110 0002 4443 9315**

STATE OF INDIANA )  
 ) SS: BEFORE THE INDIANA  
COUNTY OF MARION ) COMMISSIONER OF INSURANCE

IN THE MATTER OF: )  
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American Surety Company )  
250 East 96<sup>th</sup> Street, Suite 202 )  
Indianapolis, Indiana 46240 )

Examination of **American Surety Company**

### FINDINGS AND FINAL ORDER

The Indiana Department of Insurance conducted an examination into the affairs of the **American Surety Company** (hereinafter "Company") for the time period January 1, 2006 through December 31, 2010.

The Verified Report of Examination was filed with the Commissioner of the Department of Insurance (hereinafter "Commissioner") by the Examiner on February 13, 2012.

A copy of the Verified Report of Examination, along with a Notice of Opportunity to Make Written Submission or Rebuttal, was mailed to the Company via Certified Mail on February 28, 2012 and was received by the Company on March 2, 2012.

The Company did not file any objections.

NOW THEREFORE, based on the Verified Report of Examination, I hereby make the following **FINDINGS**:

1. That the Verified Report of Examination is a true and accurate report of the financial condition and affairs of the **American Surety Company** as of December 31, 2010.
2. That the Examiner's Recommendations are reasonable and necessary in order for the **American Surety Company** to comply with the laws of the State of Indiana.

Based on the FINDINGS, the Commissioner does hereby ORDER:

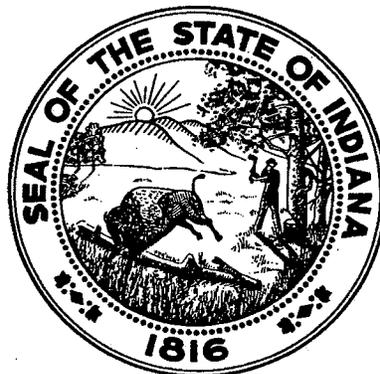
1. Pursuant to Ind. Code § 27-1-3.1-11(a)(1), the Verified Report of Examination is adopted and shall be filed. Hereafter the Verified Report of Examination, may constitute prima facie evidence of the facts contained therein in any action or proceeding taken by the Indiana Department of Insurance against the Company, its officers, directors, or agents.
2. The Company shall comply with the Examiner's Recommendations enumerated in summary form and throughout the text of the Verified Report of Examination. A written response to these recommendations should be provided to the Department within 30 days of receipt of this order.
3. Compliance with the Examiner's recommendations shall be completed on or before the filing of the subsequent annual statement. In the event it is not feasible to comply with a recommendation before the filing of the subsequent annual statement, the Company shall submit a written explanation as to why it was not feasible with the filing of the annual statement.

Signed and Sealed this 18<sup>th</sup> day of April, 2012.

  
Stephen W. Robertson  
Insurance Commissioner  
Indiana Department of Insurance

**STATE OF INDIANA**  
**Department of Insurance**  
**REPORT OF EXAMINATION**  
**OF**  
**AMERICAN SURETY COMPANY**  
NAIC Co. CODE 31380

As of  
December 31, 2010



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# STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

# IDOI

## INDIANA DEPARTMENT OF INSURANCE

311 W. WASHINGTON STREET, SUITE 300  
INDIANAPOLIS, INDIANA 46204-2787  
TELEPHONE: (317) 232-2385  
FAX: (317) 232-5251

February 14, 2012

Stephen W. Robertson, Commissioner

Honorable Stephen W. Robertson, Commissioner  
Indiana Department of Insurance  
311 West Washington Street, Suite 300  
Indianapolis, Indiana 46204-2787

Dear Commissioner:

Pursuant to the authority vested in Appointment Number 3682, an examination has been made of the affairs and financial condition of:

**American Surety Company  
250 East 96<sup>th</sup> Street, Suite 202  
Indianapolis, IN 46240**

hereinafter referred to as the "Company" or "ASC", an Indiana domestic casualty insurance company. The examination was conducted at the corporate offices of the Company and Noble Consulting Services, Inc. (Noble) in Indianapolis, IN.

The Report of Examination, reflecting the status of the Company as of December 31, 2010, is hereby respectfully submitted.

ACCREDITED BY THE  
NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

AGENCY SERVICES  
(317) 232-2413

COMPANY COMPLIANCE  
(317) 233-0697

CONSUMER SERVICES  
(317) 232-2395  
In-State 1-800-622-4461

EXAMINATIONS / FINANCIAL SERVICES  
(317) 232-2390

MEDICAL MALPRACTICE  
(317) 232-2402

SECURITIES / COMPANY RECORDS  
(317) 232-1991

## SCOPE OF EXAMINATION

The Company was last examined by representatives of the Indiana Department of Insurance (INDOI) as of the period ending December 31, 2005. The present risk-focused examination covered the period from January 1, 2006, through December 31, 2010, and was conducted by Noble, on behalf of the state of Indiana.

Actuarial specialists were not considered necessary in support of examination objectives as the Company's sole line of business written is surety appearance bonds. It was verified that limited loss or claims related activity had occurred during or subsequent to the examination period.

Noble conducted the risk-focused examination pursuant to and in accordance with the NAIC *Financial Condition Examiners Handbook* (Handbook). The Handbook requires that we plan and perform the examination to evaluate the financial condition and identify prospective risks of the Company by obtaining information about the Company, evaluating system controls, and procedures used to mitigate those risks. An examination also includes assessing the principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation, management's compliance with Statutory Accounting Principles, and Annual Statement instructions when applicable to domestic state regulations.

All accounts and activities of the Company were considered in accordance with the risk-focused examination process.

## HISTORY

The Company was incorporated under the laws of California on March 9, 1964, and commenced business effective January 1, 1987. Underwriters Surety, Inc. (USI) acquired the Company in April of 1993. As of September 8, 2003, the Company redomesticated from California to Indiana. In 2002, Eighth Amendment Holdings, Inc. (EAH) was formed to serve as a holding company for ASC and USI. As a result of USI distributing its share of ASC stock and the sale of stock by a minority shareholder in 2003, ASC became a 100% owned subsidiary of EAH. William Carmichael, Ultimate Controlling Person, became the Chief Executive Officer when John Whitlock resigned from the position in 2004.

## CAPITAL AND SURPLUS

As of December 31, 2010, the Company had 15,000 shares of common stock authorized with a stated par value of \$200 per share, of which 10,000 shares were issued and 8,600 shares were outstanding. The Company has no preferred stock authorized, issued, or outstanding. As of December 31, 2010, the Company had 1,400 shares of treasury stock outstanding with a stated par value of \$200 per share.

## DIVIDENDS TO STOCKHOLDERS

The Company paid the following dividends to EAH during the examination period.

<u>Year</u>	<u>Total</u>	<u>Ordinary Dividends</u>
2010	\$ 916,000	\$ 916,000
2009	1,100,000	1,100,000
2008	2,000,000	2,000,000
2007	-	-
2006	-	-
Total	<u>\$ 4,016,000</u>	<u>\$ 4,016,000</u>

In accordance with Indiana Code (IC) 27-1-23-4(h), the payment of dividends to holding companies or affiliated insurers may not exceed the greater of ten percent (10%) of the prior year's surplus or the gains from operations of such insurer of the prior year. In accordance with IC 27-1-23-1.5, the Company notified the INDOI of all declared dividends to the parent during the examination period.

## TERRITORY AND PLAN OF OPERATION

The Company is licensed in forty-seven (47) states and had written premiums in 33 of those states in 2010. The majority of the Company's premiums are produced in California, Florida, and Texas. The Company is a mono-line insurer specializing in bail bond (surety appearance bonds) coverage. Business is produced through a network of independent agents. The agents are required to maintain build-up funds. These funds are intended to ensure the Company is protected from losses, costs, or expenses. Agents retain in excess of 80% of the gross premium as commission, 10% goes to build-up funds, and the remaining 10% is provided to the Company as net premium. The agents retain collateral from the defendant in order to mitigate potential losses. Collateral is generally in the form of cash, real estate, or assignment of funds.

## GROWTH OF THE COMPANY

The following exhibit summarizes the financial results of the Company during the examination period:

<u>Year</u>	<u>Admitted Assets</u>	<u>Liabilities</u>	<u>Surplus and Other Funds</u>	<u>Premiums</u>	<u>Net Income</u>
2010	\$ 13,504,931	\$ 2,655,048	\$ 10,849,883	\$ 7,617,023	\$ 359,254
2009	14,184,648	2,727,277	11,457,371	8,196,870	916,156
2008	13,633,472	2,243,292	11,390,180	8,776,376	885,690
2007	15,352,837	2,313,431	13,039,406	8,872,599	1,700,119
2006	13,804,652	2,481,066	11,323,586	8,425,677	1,336,569

The Company's balance sheet has been fairly consistent throughout the examination period. Admitted assets decreased in 2010, primarily due to an additional investment in their bond portfolio and a dividend payment of \$916,000. The Company's liabilities slightly decreased in 2010, primarily due to decreases in unearned premiums and taxes, licenses, and fees.

Surplus and other funds decreased by approximately \$607,000 in 2010, primarily due to a modest net income of \$359,254 and a dividend payment of \$916,000. The remaining difference was due to an approximate \$58,000 increase in net unrealized capital gain and a \$106,000 increase in non-admitted assets.

Net income was substantially lower in 2010 compared to the Company's historical standards. This significant decrease in net income was due to a decrease in premiums earned, a higher than normal amount of losses incurred, a shift in the Company's investment portfolio, and a decrease in federal and foreign income taxes incurred.

## MANAGEMENT AND CONTROL

### Directors

The Bylaws provide that the business affairs of the Company are to be managed by a Board of Directors. The minimum number of directors constituting the Board of Directors shall be five (5). The authorized number of directors constituting the Board may be increased by the Board, but to no more than fifteen (15) members. The policyholders elect the members of the Board of Directors at each annual meeting. The following is a listing of persons serving as directors at December 31, 2010, and their principal occupations as of that date:

<u>Name and Address</u>	<u>Principal Occupation</u>
John Taylor Whitlock Zionsville, IN	Director Former Owner and CEO, American Surety
William Burt Carmichael Indianapolis, IN	Director CEO and President, American Surety
Paul Joseph Longstreth Carmel, IN	Director Secretary, CFO, and Treasurer, American Surety
Michael Joseph Whitlock Indianapolis, IN	Director Vice President, American Surety
Daniel Richard Amato Orlando, FL	Director Vice President, American Surety

### Officers

The Bylaws state the officers of the Company shall consist of a Chairman of the Board or a President or both, a Chief Executive Officer, a Secretary, a Treasurer, and a Chief Financial Officer. The Company may also have, at the discretion of the Board of Directors, one (1) or more Vice Presidents, one (1) or more Assistant Secretaries, and such other officers as the Board of Directors shall determine appropriate.

The following is a list of key officers and their respective titles as of December 31, 2010:

<u>Name</u>	<u>Office</u>
William Burt Carmichael	President and CEO
Paul Joseph Longstreth	Secretary, CFO, and Treasurer
Kathleen Ann Boyer	Assistant Secretary
Michael Joseph Whitlock	Vice President
Daniel Richard Amato	Vice President
Gary Wayne Logue	Assistant Vice President

### CONFLICT OF INTEREST

The Company requires officers and directors to review and sign Conflict of Interest statements on an annual basis. The officers and directors have reviewed and signed their statements as of December 31, 2010.

### OATH OF OFFICE

IC 27-1-7-10(i) stipulates that every director, when elected, shall take and subscribe to an oath stating that he or she will faithfully, honestly, and diligently administer the affairs of the corporation and will not knowingly violate any of the laws applicable to such corporation. As of December 31, 2010, all directors have subscribed to an Oath of Office.

### CORPORATE RECORDS

#### Articles of Incorporation

During 2010, the Company amended its Articles of Incorporation to reflect their new address.

#### Bylaws

There were no amendments made to the Bylaws during the examination period.

#### Minutes

The Board of Directors and Audit Committee meeting minutes were reviewed for the period under examination through the fieldwork date. Significant actions taken during each meeting were noted.

IC 27-1-7-7(b) states an annual meeting of shareholders, members, or policyholders shall be held within five (5) months after the close of each fiscal year of the Company and at such time within that period as the Bylaws may provide. For each year under review, the Annual Meeting of Shareholders was held within the first five (5) months after the close of each fiscal year.

## AFFILIATED COMPANIES

### Organizational Structure

The following organizational chart shows the affiliated insurance companies and the Company's subsidiaries as of December 31, 2010:

	<u>NAIC Co. Code</u>	<u>Domiciliary State</u>
Eighth Amendment Holdings, Inc William B. Carmichael (51%) Michael J. Whitlock (24.5%) Paul J. Longstreth (24.5%)		SC
- American Surety Company (100% owned by EAH)	31380	IN
- Underwriters Surety, Inc (100% owned by EAH)		IN

### Affiliated Agreements

The following affiliated agreements and transactions were disclosed as part of the Form B – Holding Company Registration Statement and were filed with the INDOI, as required, in accordance with IC 27-1-23-4.

### *Manager's Contract*

The Company has a Manager's Contract with USI to provide all management services. ASC has no employees. USI performs all underwriting, claims, licensing and administrative functions for ASC. During 2009 and 2010, the Company paid fees totaling \$4.5 and \$4.3 million, respectively, for services provided.

## FIDELITY BOND AND OTHER INSURANCE

The Company protects itself against loss from any fraudulent or dishonest acts by its employees through a fidelity bond issued by Travelers Insurance Company. The bond has blanket coverage of \$200,000 with a deductible of \$10,000. The Company meets the prescribed minimum coverage of \$125,001 specified by the NAIC as of December 31, 2010.

The Company had additional types of coverage in-force at December 31, 2010, including but not limited to, auto, property and liability, workers' compensation, umbrella liability, property and general liability, and directors and officers liability.

## PENSION, STOCK OWNERSHIP, AND INSURANCE PLANS

EAH sponsors a 401(k) retirement savings plan covering substantially all employees of the Company under which they may elect to contribute on a pre-tax basis (subject to the IRS limit). The Plan has discretionary matching provisions. As ASC has no employees, there were no employer contributions in 2009 or 2010.

## STATUTORY DEPOSITS

The Company reported the following statutory deposits at December 31, 2010:

<u>State</u>	<u>Book Value</u>	<u>Fair Value</u>
For all Policyholders:		
Indiana	\$ 1,687,601	\$ 1,717,614
All Other Special Deposits:		
Florida	199,508	219,004
Georgia	40,000	40,000
Indiana	75,000	75,000
Kansas	100,770	107,083
Massachusetts	130,774	138,094
Nevada	253,150	263,967
New Hampshire	275,853	289,256
New Mexico	125,000	125,000
Oklahoma	529,858	534,369
Oregon	262,234	268,718
Rhode Island	101,226	101,226
South Carolina	236,250	235,170
Tennessee	109,350	109,350
Virginia	210,510	213,282
Wyoming	99,593	103,084
Total Deposits	<u>\$ 4,436,677</u>	<u>\$ 4,540,217</u>

## ACCOUNTS AND RECORDS

The Company's accounting procedures, practices, account records, and supporting data were reviewed and tested to the extent deemed necessary. The trial balances prepared from the Company's general ledger for the years ended December 31, 2009 and 2010, were agreed to the respective Annual Statements. The Annual Statement for the years ended December 31, 2006 through December 31, 2010, were agreed to each year's independent audit report without material exception. The Company's accounting procedures, practices, and account records were deemed satisfactory.

**AMERICAN SURETY COMPANY**

**FINANCIAL STATEMENTS**

Assets

As of December 31, 2010

	<u>Per Annual</u> <u>Statement</u>	<u>Examination</u> <u>Adjustments</u>	<u>Per</u> <u>Examination</u>	<u>December 31,</u> <u>Prior Year</u>
Bonds	\$ 8,238,831	\$ -	\$ 8,238,831	\$ 7,913,380
Stocks:				
Common stocks	1,118,257	-	1,118,257	1,087,163
Cash, cash equivalents and short-term investments	2,019,833	-	2,019,833	2,967,046
Subtotals, cash and invested assets	11,376,921	-	11,376,921	11,967,589
Investment income due and accrued	90,030	-	90,030	92,072
Premiums and considerations:				
Uncollected premiums and agents' balances in course of collection	982,036	-	982,036	1,060,345
Current federal and foreign income tax recoverable and interest thereon	191,942	-	191,942	202,841
Net deferred tax asset	827,892	-	827,892	861,801
Receivables from parent, subsidiaries and affiliates	5,241	-	5,241	-
Aggregate write-ins for other than invested assets	30,869	-	30,869	-
<b>TOTALS</b>	<b>\$ 13,504,931</b>	<b>\$ -</b>	<b>\$ 13,504,931</b>	<b>\$ 14,184,648</b>

**AMERICAN SURETY COMPANY**

**FINANCIAL STATEMENTS**

**Liabilities, Surplus and Other Funds**

As of December 31, 2010

	<u>Per Annual</u>	<u>Examination</u>	<u>Per</u>	<u>December 31,</u>
	<u>Statement</u>	<u>Adjustments</u>	<u>Examination</u>	<u>Prior Year</u>
Losses	\$ 1,294,830	-	\$ 1,294,830	\$ 1,210,325
Loss adjustment expenses	39,640	-	39,640	58,097
Other expenses	231,048	-	231,048	183,370
Taxes, licenses and fees	31,926	-	31,926	90,583
Unearned premiums	993,512	-	993,512	1,131,943
Payable to parent, subsidiaries and affiliates	3,758	-	3,758	22,266
Aggregate write-ins for liabilities	60,334	-	60,334	30,693
Total liabilities	<u>2,655,048</u>	<u>-</u>	<u>2,655,048</u>	<u>2,727,277</u>
Common capital stock	2,000,000	-	2,000,000	2,000,000
Gross paid in and contributed surplus	400,000	-	400,000	400,000
Unassigned funds (surplus)	9,122,039	-	9,122,039	9,729,527
Less treasury stock, at cost:	672,156	-	672,156	672,156
Surplus as regards policyholders	<u>10,849,883</u>	<u>-</u>	<u>10,849,883</u>	<u>11,457,371</u>
<b>TOTALS</b>	<b><u>\$ 13,504,931</u></b>	<b><u>\$ -</u></b>	<b><u>\$ 13,504,931</u></b>	<b><u>\$ 14,184,648</u></b>

**AMERICAN SURETY COMPANY**  
**FINANCIAL STATEMENTS**

**Statement of Income**

As of December 31, 2010

	<u>Per Annual</u>	<u>Examination</u>	<u>Per</u>	<u>December 31,</u>
UNDERWRITING INCOME	<u>Statement</u>	<u>Adjustments</u>	<u>Examination</u>	<u>Prior Year</u>
Premiums earned	\$ 7,617,023	\$ -	\$ 7,617,023	\$ 8,196,870
<b>DEDUCTIONS</b>				
Losses incurred	599,028	-	599,028	660,867
Loss adjustment expenses incurred	177,365	-	177,365	196,759
Other underwriting expenses incurred	6,864,142	-	6,864,142	7,113,363
Total underwriting deductions	<u>7,640,535</u>	<u>-</u>	<u>7,640,535</u>	<u>7,970,989</u>
Net underwriting gain (loss)	(23,512)	-	(23,512)	225,881
<b>INVESTMENT INCOME</b>				
Net investment income earned	291,618	-	291,618	328,147
Net realized capital gains (losses) less capital gains tax	16,941	-	16,941	530,174
Net investment gain (loss)	308,559	-	308,559	858,321
<b>OTHER INCOME</b>				
Net gain (loss) from agents' or premium balances charged off	(7,111)	-	(7,111)	(6,943)
Aggregate write-ins for miscellaneous income	92,217	-	92,217	100,286
Total other income	<u>85,106</u>	<u>-</u>	<u>85,106</u>	<u>93,343</u>
Net income, after dividends to policyholders, after capital gains tax and before all other federal and foreign income taxes	370,153	-	370,153	1,177,545
Federal and foreign income taxes incurred	10,899	-	10,899	261,389
<b>Net income</b>	<u><u>\$ 359,254</u></u>	<u><u>\$ -</u></u>	<u><u>\$ 359,254</u></u>	<u><u>\$ 916,156</u></u>

**AMERICAN SURETY COMPANY**

**FINANCIAL STATEMENTS**

**Capital and Surplus Reconciliation**

<b>CAPITAL AND SURPLUS ACCOUNT</b>	<b>As of</b> <b><u>12/31/2010</u></b>	<b>As of</b> <b><u>12/31/2009</u></b>	<b>As of</b> <b><u>12/31/2008</u></b>	<b>As of</b> <b><u>12/31/2007</u></b>	<b>As of</b> <b><u>12/31/2006</u></b>
Surplus as regards policyholders, December 31 prior year	\$ 11,457,371	\$ 11,390,180	\$ 13,039,406	\$ 11,323,586	\$ 9,436,025
Net income	359,254	916,156	885,690	1,700,119	1,336,569
Change in net unrealized capital gains or (losses) less capital gains tax	58,779	20,884	(422,461)	(4,900)	400,001
Change in deferred income tax	(3,629)	(55,304)	227,889	20,735	(21,972)
Change in nonadmitted assets	(105,892)	285,455	(340,344)	(134)	172,963
Dividends to stockholders	(916,000)	(1,100,000)	(2,000,000)	-	-
Change in surplus as regards policyholders for the year	<u>(607,488)</u>	<u>67,191</u>	<u>(1,649,226)</u>	<u>1,715,820</u>	<u>1,887,561</u>
<b>Surplus as regards policyholders, December 31 current year</b>	<b><u>\$10,849,883</u></b>	<b><u>\$11,457,371</u></b>	<b><u>\$11,390,180</u></b>	<b><u>\$13,039,406</u></b>	<b><u>\$11,323,586</u></b>

**COMMENTS ON THE FINANCIAL STATEMENTS**

There were no recommended adjustments to the Financial Statements as of December 31, 2010, based on the results of this examination.

**SUBSEQUENT EVENTS**

There were no events subsequent to the examination date and prior to the completion of fieldwork that were considered material events requiring disclosure in this Report of Examination.

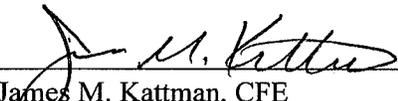
**AFFIDAVIT OF EXAMINER-IN-CHARGE**

This is to certify that the undersigned is a duly qualified Examiner-in-Charge appointed by the Indiana Department of Insurance and that he, in coordination with staff assistance from Noble Consulting Services, Inc., hereinafter collectively referred to as the "Examiners", performed an examination of **American Surety Company** as of **December 31, 2010**.

The Indiana Department of Insurance is accredited under the National Association of Insurance Commissioners Financial Regulation Accreditation Standards.

This examination was performed in accordance with those procedures required by the NAIC Financial Condition Examiners Handbook and other procedures tailored for this examination. Such procedures performed on this examination do not constitute an audit made in accordance with generally accepted auditing standards and no audit opinion is expressed on the financial statements contained in this report.

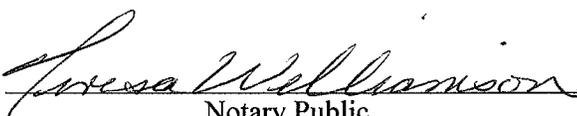
The attached report of examination is a true and complete report of condition of **American Surety Company** as of **December 31, 2010**, as determined by the undersigned.

  
\_\_\_\_\_  
James M. Kattman, CFE  
Noble Consulting Services, Inc.

State of:  
County of:

On this 22<sup>nd</sup> day of Feb, 2012, before me personally appeared, **James M. Kattman** to sign this document.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal in said County and State, the day and year last above written.

My commission expires: 9-15-2019   
Notary Public

